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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1924

JAMES R. MUNIZ and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA,

Petitioners,

v.

ROY O. HOFFMAN, Director, Region 20, National Labor Relations Board,

Respondent.

BRIEF OF THE UNION NACIONAL DE TRABAJADORES AS *AMICUS CURIAE*

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The Union Nacional de Trabajadores, as amicus curiae respectfully submits the following brief urging that the opinion of the court below regarding the application of 18 U.S.C. §3692 be reversed.

STATEMENT OF INTEREST OF AMICUS

The Union Nacional de Trabajadores (hereinafter UNT) is a labor organization as defined by the National Labor Relations Board as amended, 29 U.S.C. §152, which represents approximately 2,000 workers in various industries throughout Puerto Rico. UNT has vigorously opposed the imposition by the National Labor Relations Board of jurisdiction over Puerto Rican labor relations as contrary to the principles of International Law and even to the Constitution of the "Commonwealth" of Puerto Rico which guarantees Puerto Rican workers the right to strike and to bargain collectively. 1 L.P.R.A. p.240-241, Art.II, see 17 and 18 of the Constitution.

The UNT is currently in the process of defending itself against charges of criminal contempt arising from actions brought against it at the initiation of

the National Labor Relations Board. In those proceedings, UNT made a motion for a jury trial under 18 U.S.C §3692 which was denied by the United States District Court for the District of Puerto Rico. The ruling of the District Court was reversed by the United States Court of Appeals for the First Circuit in a ruling on a petition for mandamus holding that §3692 applies to contempts that arise under the Taft-Hartley Act. 29 U.S.C. 141 et seq. In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974). Neither the National Labor Relations Board nor the United States government sought to appeal the decision of that court.

These criminal contempt charges were initiated by the Board while charges of civil contempt were pending against the Union. Despite the fact that charges of civil contempt were withdrawn because the

injunction in question was being complied with, the Board continues its prosecution of criminal contempt to this day, more than a year after the strike was settled.

This use of the criminal contempt power by the NLRB is merely one example of the Board's effort to harass a union which disputes its jurisdiction.

In recent years there has been a dramatic increase in NLRB action in Puerto Rico. That increase can be expected to accelerate with the increasing number of strikes resulting from the extraordinarily high cost of living in Puerto Rico. In that context, the NLRB is taking on more and more toward unions the role that employers played in the early 1930's - using the judicial process to hamper organizing, as well as to harass political opponents of the Board itself. Therefore, the right, which Congress sought to guarantee,

to a trial by jury in contempts arising out of labor disputes is of special significance to Puerto Rican unions. In addition, as noted above, UNT presently faces charges of criminal contempt and is to be tried by a jury pursuant to the order of the United States Court of Appeals for the First Circuit. Therefore, the ruling of this Court may have a direct bearing on the charges now pending against the Union.

Thus, the UNT submits the following brief in an effort to assist this Court in construing 18 U.S.C. §3692 and the jury guarantee therein.

SUMMARY OF ARGUMENT

The question before this Court is whether the guarantee of a jury trial for contempts arising out of labor disputes as set forth in 18 U.S.C. §3692, is to be applied to <u>all</u> such contempts as

the statute states, or limited to contempts governed by the Norris-LaGuardia Act as the court below held. Hoffman v. Longshoremen and Warehousemen, Local 10, 492 F.2d 929 (9th Cir. 1974). This past summer the United States Court of Appeals for the First Circuit held that the plain wording of the statute must be honored and a jury trial provided for all such contempts including those governed by the Taft-Hartley Amendments to the National Labor Relations Act. In re Union Nacional de Trabajadores, 502 F.2d 113 (1st Cir. 1974).

In 1932, Congress enacted the Norris-LaGuardia Act to protect unions from abusive and devastating injunctions brought against them by employers. An important part of that protective scheme was the guarantee of a jury trial " in all cases

arising under sections 101-115 of this Title in which a person shall be charged with contempt...." 29 U.S.C. §111.

The Taft-Hartley Act was enacted in 1947, giving the National Labor Relations Board the power, previously reserved to (and abused by) employers, to seek injunctions against unions. The Taft-Hartley Act, with its broad and potentially abusive powers for the NLRB was met with a storm of protests by union people.

In 1948, as part of the recodification of the Code of Criminal Procedure, Congress took the particularized Jury Guarantee of the Norris-LaGuardia Act, changed the wording to cover

> ...all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute...
> 18 U.S.C. §3692

and placed it in Title 18, the general

title covering Criminal Law and Procedure.

There are no Congressional reports or debates to clarify the marked change in language and placement of the jury guarantee. Thus, as the First Circuit recently concluded, even "if this were an ordinary statute such a clear change in language from a restrictive phrasing would negate any inference that the restrictive phrasing was still to be applied." In re Union Nacional de Trabajadores, supra, 502 F.2d at 118. As the First Circuit noted however, this is no ordinary statute. The history of the abusive use of injunctions against the labor movement, coupled with the protest that accompanied the Taft-Hartley Amendments and the new power of the National Labor Relations Board to obtain injunctions against unions, underscore the fact that the change of language in the recodification of the

jury guarantee broadening its scope must be taken at face value.

Very few courts have been called to apply §3692 and until the ruling of the First Circuit this past summer, none had given its construction any detailed consideration. The First Circuit was correct in concluding that neither the opinion of the court below nor that of the Seventh Circuit in Madden v. Grain Elevator Flour and Feed Mill Workers, 334 F.2d 1014 (7th Cir. 1964) "...revealed sufficient analysis underlying [their] conclusion" that §3692 is limited to Norris-LaGuardia contempts "to be preclusive or persuasive," 502 F.2d at 117. Both courts based their conclusions on confusion of the equity power of the court with its power to punish for criminal contempt. Further, Madden, and the other opinions on which the Court below based its conclusions, were

civil actions and therefore irrelevant to the problem of the construction of a statute governing criminal contempt.

Thus, this Court should look to the careful analysis of 18 U.S.C. §3692 by the First Circuit and adopt its conclusions that the jury guarantee, as recodified, applies, as it states, to all contempts arising out of labor disputes including those, such as the contempt at issue herein, governed by the Taft-Hartley Act.

ARGUMENT

INTRODUCTION

One issue before this Court is the interpretation of 18 U.S.C. §3692, which guarantees a jury trial in contempts growing out of labor disputes. That section reads in pertinent part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused

> shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed.
>
> 18 U.S.C. §3692 (emphasis supplied).

The specific question at issue is whether the jury guarantee applies, as the statute states, to all criminal contempts arising out of labor disputes and in particular, Taft-Hartley Act, 29 U.S.C. §141 et seq. contempts, or whether, contrary to the wording of the statute, the protection of a jury trial is to be restricted to only some contempts, i.e., those arising under the Norris-LaGuardia Act, 29 U.S.C. §101 et seq.

In the first detailed consideration of §3692 by any court, on August 14, 1974 the Court of Appeals for the First Circuit held that §3692 does apply to contempts arising under the Taft-Hartley Act, and is not limited to contempts arising

under the Norris-LaGuardia Act. In re Union Nacional de Trabajadores, supra. In so doing the court expressly rejected the rulings of both the Ninth Circuit, in the case now before this Court, and the Seventh Circuit in Madden v. Grain, Elevator, Flour and Feed Mill Workers, supra as containing insufficient "...analysis underlying the conclusion to be preclusive or persuasive." 502 F.2d at 117.

Amicus urges this Court in construing §3692 to adopt the position of the First Circuit.

I. THE HISTORY OF THE GUARANTEE OF A JURY TRIAL FOR LABOR CONTEMPTS SUPPORTS THE CONTENTION THAT § 3692 IS NOT RESTRICTED TO CONTEMPTS UNDER THE NORRIS LAGUARDIA ACT.

A. Statutory Background of 18 U.S.C. §3692.

The guarantee of trial by jury in a labor contempt was first enacted in 1932 as Section 11 of the Norris-LaGuardia Act.

29 U.S.C. §111. That section provided for a jury trial:

> In all cases arising under Sections 101-115 of this Title in which a person shall be charged with contempt....
> (Emphasis supplied.) 29 U.S.C. §111 superceded.

In 1948, §11 was recodified and placed in Title 18, the Code of Criminal Procedure. The recodification, as stated in H.R. Rep. 304, 80th Cong., 1st Sess., p. A176 made the following changes:

> The phrase 'or the District of Columbia arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute' was inserted and reference to specific sections of the Norris-LaGuardia Act [§§101-115 Title 29, U.S.C., 1940 ed] were eliminated.
> (Emphasis supplied.)

It appears clear from the above that although Congress originally provided for jury trials only in labor contempts arising under Norris-LaGuardia, in 1948, by

omitting reference to that statute and replacing it with general inclusive phraseology, Congress explicitly extended that most important protection to all contempt cases in labor disputes where there was alleged to be a violation of an injunction. Certainly, if Congress had intended to continue to limit jury trials to Norris LaGuardia violations they would have left the provision within that Act, in Title 29, rather than moving it to Title 18, the title covering all criminal procedures. At the very least they would have specifically so limited the statute */

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*/ Congress plainly knew how to state when the jury provision would not apply, for in §3692 it expressly (and solely) excluded the following:

> This section shall not apply to contempts committed in the presence of the Court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders or process of the court.

in order to avoid any possible misconstruction of what by its own terms is a general provision for a trial by jury.

B. The Legislative History of the Original Jury Guarantee in the Norris-LaGuardia Act.

The Norris-LaGuardia Act, of which 29 U.S.C. §111 was but a part, was passed in 1932 as one of the earliest actions of the New Deal to come to the aid of the labor unions which had been plagued by repeated devastating injunctions.

The situation was described by United States Representative Fernandez in House debates in support of the 1932 Act as follows:

> For years the American working people have felt a keen sense of injustice because corporations have resorted to the wrongful use of injunctions in labor controversies and have suffered mentally and materially through what they firmly believe was the unjust application of the injunctive process.
>
> The right to organize is nullified when people are prohibited

> from exercising their economic strength and from appealing to other workers to join with them in a common cause.
>
> Because of the injustices and the abuse of power on the part of some of the Federal judges this legislation was enacted.

75 Cong. Rec., p. 5513, 72nd Cong., 1st Sess., March 8, 1932.

Norris-LaGuardia was enacted to limit the use of the injunctive power which was crippling the unions and therefore materially harming the conditions of American working men and women. The statute set out not only the circumstances but also the procedures under which the injunctive power could be used by the courts.*/

As a further protection from the prevalant heavy-handedness of the anti-labor courts, the Norris-LaGuardia Act included a provision for trial by jury where

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*/ 29 U.S.C. §107 requires a hearing on notice in open court with the opportunity for defendants to both cross-examine the witnesses against them and present testimony on their own behalf.

contempt of the injunctive order was charged. A jury trial was provided for specifically because the court had been playing the role of grand jury, prosecutor, judge and jury.

As Representative Schneider stated urging the passage of the provision:

> Not only did the terms of these injunctions reach unbelievable proportions in their denial of elementary constitutional and civil rights but the manner in which these injunctions were issued and the proceedings which were brought for their alleged violation were equally high-handed. The judge whose order or decree had been violated, if, in fact, it had been violated--and in many such instances the violation of the decree was the only course a self-respecting American could pursue--became the prosecuting officer, the jury and the judge all rolled up in one.
>
> He was the complainant, he was the prosecutor, he judged the facts without a jury, convicted the accused and sentenced him to jail for contempt of court. And these judges, setting at naught the most precious rights which

ages of progress and struggle had made the heritage of all, expected the people to have anything but contempt for them and their orders.

75 Cong. Rec., p. 5515, 72nd Cong., 1st Sess., March 8, 1932.

Senator Norris, the sponsor of the Act, set forth the reason for a jury in labor contempts most starkly as follows:

> And suppose one of these defendants disobeyed this injunction? He would not be violating any State law! He would be doing only what every human being has a right to do! No statute of any State or the Federal Government would preclude him from giving full publicity to all of the facts. But, under this judge-made law, a new statute was put in force-not by the legislature of the State, not by anyone having authority to enact a statute, but by the judge sitting on the Federal bench.
>
> And let us suppose, too, that for a violation of this order, one of the defendants was arrested. Where would he be tried? Would it be in the courts of the State where the offense is alleged to have been committed? No. It would be before the same judge who made the law. The judge who,

acting as a legislator, made the law. He would sit as a judge to try an offense for violation of the judge-made law. In such a case the defendant would have committed a crime as defined by this arbitrary order of a judge, who is not supposed, under our Constitution and laws, to have any legislative authority. And if, when he was arrested, there was a dispute as to whether he has violated the order of the judge and thus committed a crime, would he have the right to lay his case before a jury of his peers? Would the Constitution and the laws of the State where the alleged offense was committed control in such trial? No. No jury could sit in that case. Who would be the jury? The answer is, the judge--the same person who made the law, the same person who fixes the penalty. He would fix the punishment and would render the judgment, and at his will the defendant would go to jail for a time limited only by the discretion of the same judge.

75 Cong. Rec., 72nd Cong.,1st Sess., February 23, 1932, p. 4507.

In 1948, as noted above, when the criminal code was recodified, the jury provision was removed from the Norris-LaGuardia Act and its wording was altered, changing its coverage from contempts aris-

ing under "Sections 101-115 of this Title" (i.e. the Norris-LaGuardia Act) to "Cases of contempt... involving or growing out of a labor dispute."

There is virtually no legislative history to clarify what Congress intended to accomplish by the change of language. The relevant House Reports merely repeat the wording of §3692 and indicate that it was based on 29 U.S.C. §111 with no explanation or analysis of the changes in the new provision. H.Rep. 152, 79th Cong., 1st Sess., p. A164; H.Rep. 304, 80th Cong. 1st Sess., p. A176. In contrast, there is specific analysis of the changes in another section of Title 18, 18 U.S.C. §402 (contempts constituting crimes) which was based on the Clayton Act and other statutes. There the revisers expressly stated, "'changes in phraseology' ...did not 'change [the] meaning or sub-

stance' or extend the scope of the provision." H.Rep. No. 304, 80th Cong., 1st Sess., p. A30.

Nor does the Congressional Record provide any debate to clarify the recodification of the jury provision.*/

***/ Possibly the only Congressional discussion of §3692 occurs nine years after the fact in debates over the Civil Rights Act of 1957. In those debates, Congressmen Celler and Keating argue that §3692 applied only to Norris-LaGuardia contempts. Of course, debates of an unrelated statute in 1957, making reference to a statute passed nine years earlier, cannot be considered legislative history. Rather they are merely after-the-fact analysis. More important, the major portion of that debate is a passage titled "Jury Trials In Contempt Proceedings With Special Reference To Labor Injunctions" which was inserted in the Congressional Record by both Celler and Keating. That passage was actually excerpted from an NLRB brief in the case of NLRB v. Red Arrow Freight Lines, 193 F. 2d 979 (5th Cir. 1952). See 103 Cong. Rec., pp.8684 and 8688, 85th Cong., 1st Sess., June 10, 1957.**

Finally, Celler and Keating were arguing a narrow reading of §3692 as part of their effort to defeat an amendment which would provide a jury trial for the contempts arising out of violations of the Civil Rights Act of 1957, a totally unrelated statute designed to implement the right of blacks to vote as guaranteed by the Fifteenth Amendment.

For it was feared by Northern Congressmen that if a jury trial were provided for under the Civil Rights Act of 1957, Southern juries (com-

(fn. cont. next page)

Lacking any clear explanation of Congressional meaning and intent in re-writing and codifying §3692, this Court must look to the plain words of the statute and its historical context for its scope and meaning.

C. The Historical Context of §3692 Indicates the Jury Guarantee Was Intended to Apply to Taft-Hartley Contempts.

When the original jury provision in §11 of Norris-LaGuardia, 29 U.S.C.§111, was enacted, only employers were in a position to obtain injunctions against unions. Indeed, §11 was enacted as a safe-

(fn. cont. from preceding page)

posed almost exclusively of whites) would refuse to convict white defendants charged with obstructing the right of blacks to vote because of white supremacy, thereby totally defeating the purposes of the statute. See testimony of Congressman O'Hara, 103 Cong.Rec. 8707, 85th Cong. 1st Sess.

In fact, the importance of the jury trial was recognized by Congress which at least partially rejected their posiiton by enacting 42 U.S.C. §1995 which provides that a person tried and convicted of criminal contempt is entitled to a trial de novo before a jury if he or she received a sentence of more than $300 or more than 45 days in jail.

guard against the abusive nature of those injunctions. With the enactment of the Wagner and Taft-Hartley Acts in 1935 and 1947, the government became empowered to seek injunctive relief against unions. There was tremendous vocal opposition among working people to this new development. With this new power of injunctions came the potential for the government to abuse the power, like the employer had in the past. In 1948, when Congress recodified §3692, and changed the language of §11, which had limited the provision of a jury to cases governed by Norris-LaGuardia, to "all cases of contempt...involving or growing out of a labor dispute," that body was aware that such contempts could now arise under Taft-Hartley. Therefore, it would appear from the very words of §3692, that having increased the situations under which injunctions could be obtained, by passing the National Labor

Relations Act, Congress recognized it must broaden the jury guarantee as well. Thus it provided that if criminal contempt charges should flow from the new NLRB initiated injunctions, defendants would have the same protection of a jury trial which they had in the context of the earlier employer injunctions.

As the Court of Appeals for the First Circuit stated in Union Nacional de Trabajadores, 502 F.2d 113, 118-119 (1st Cir. 1974):

> If this were an ordinary statute such a clear change in language from a restrictive phrasing to a broader one would negate any inference that the restrictive phrasing was still to be applied.
>
> This is, however, not an ordinary statute, but one infused with a national policy arrived at after a painful and lengthy period of strife and debate. Absent any contemporary and significant legislative history, it seems to us entirely plausible that Congress recognized that the conditions which led it to grant authority to the Board to petition for in-

junctive relief would also lead to its not infrequent use. This has, of course, proven to be the case, with Board-requested injunctions now being far more common than those requested by employers.

* * * * *

Indeed, were §3692 to be read as identical in coverage with its predecessor section, the Congress in 1947 and 1948 would have worked the irony of creating a new and more easily obtained kind of labor injunction while, for practical purposes, confining the old jury trial protections to an obsolescing kind of injunction.

II. THE ANALYSIS OF THE COURT BELOW DOES NOT PROVIDE ADEQUATE BASIS FOR ITS CONCLUSION THAT §3692 DOES NOT APPLY TO TAFT-HARTLEY CONTEMPTS.

A. The Provision Of A Jury Trial For Criminal Contempts Arising Under Taft-Hartley Would Not Interfere With The Court's Equity Power.

The opinion of the court below rests on the argument that if §3692 were to provide a jury trial for criminal contempts arising under the Taft-Hartley Act, it would be implicitly repealing the "grants of equitable powers to district courts as embodied in §10(1) of the Act, 29 U.S.C. §160(1)...." */ Hoffman v. Longshoremen & Warehousemen, Local 10, supra, 492 F.2d at 934.

*/ 29 U.S.C. §160(1) provides that a district court can enter injunctive relief, temporary or preliminary, pending the adjudication of a charge filed by the National Labor Relations Board when an unfair labor practice has been committed within the meaning of 29 U.S.C. §158(b)(4)(A), (B) or (C); §158(b), §158(e), or §158(b)(7).

The basic flaw in the analysis of the court below is that it incorrectly confuses the equity and criminal jurisdictions of the district court. For the power of the district court to enter injunctive relief pending adjudication of alleged unfair labor practices is unaffected by the availability of a jury trial for charges of criminal contempt. Only the court's power to punish for alleged violations of such an injunction is involved in §3692.

As the United States Court of Appeals for the First Circuit stated in its opinion in Union Nacional de Trabajadores, supra,

> What we are dealing with in this case is the question of punishment after the event, not a proceeding which will interrupt or delay enforcement

of injunctions. */
502 F.2d at 119.

The Court went on,

> We find it difficult to think of a Court sitting to mete out punishment for past offenses as a court 'sitting in equity.' Criminal contempt proceedings can arise from proceedings begun either in law or equity. While 'contempt' generically may 'sound in' equity, a criminal contempt proceeding really stems from the inherent power of a court, not merely a Chancellor, to vindicate its authority. It is sui generis. United States v. Barnett, 346 F.2d 99 (5th Cir., 1965). The very fact that §3692 is now placed under Title 18, Crimes and Criminal Procedure, adds to our conviction that proceedings thereunder cannot be equated with proceedings before a court specifically described as 'sitting in equity.' 502 F.2d at 120.

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*/ The First Circuit also noted in response to an NLRB contention that a judge trial was necessary for a Taft-Hartley contempt because of the complexity of the issues before the Court, "This involves nothing of the kind of expertise which is supplied by the Board in determining whether or not an act constitutes an unfair labor practice. It involves only the determination, whether individuals or groups did in fact disobey, with requisite knowledge and intent, a court order so as to impose criminal sanctions. 502 at 119.

B. The Cases Relied On By The Court Below Are All Distinguishable And Provide Insufficient Foundation For Its Opinion.

The opinion below relies on the cases of Brotherhood of Local Firemen and Enginemen v. Bangor and Aroostook R.R. Co., 380 F.2d 570, 580 (D.C. Cir., 1967), cert. den. 389 U.S. 327 (1967); Madden v. Grain Elevator, Flour and Feed Workers, 334 F. 2d 1014, 1020 (7th Cir., 1964) and secondarily on Schauffler v. United Association of Journeymen, 230 F.2d 572 (3rd Cir. 1956), cert. den. 352 U.S. 825 (1956) and NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952). The Court itself concedes that the above cases are civil cases (and, therefore, presumably not controlling). The First Circuit, in Union Nacional de Trabajadores, notes that Madden and the opinion of the Court below are the two main cases dealing with appli-

cation of §3692 and makes short shrift of both, stating:

> Neither case, in our opinion, revealed sufficient analysis underlying the conclusion to be preclusive or pervasive. Maddensimply states a conclusion, while, as we note below, Hoffman's fear of any limitation on the Board's equitable powers is misplaced. 3/
>
> 3/ The cases cited by Madden and Hoffman merely deal with the question of the jurisdiction of the courts to issue injunctions, not the scope and applicability of §3692. See, e.g., Building Construction Trades Council v. Albert, 302 F.2d 594, 598 (1st Cir., 1962).
> Union Nacional de Trabajadores, supra, 502 F.2d at 117.

Looking more closely at the cases relied on below we see that both Brotherhood of Local Firemen & Enginemen and Schauffler rely on Madden. We will therefore begin our analysis with that case.

Firstly, Madden v. Grain Elevator, Flour & Feed Mill Workers, supra, was

a civil, not a criminal, contempt and therefore the jury provisions regarding contempt embodied in the Code of Criminal Procedure did not apply. Further discussion of whether §3692 applied in Taft-Hartley cases was therefore only dicta. The applicable portion of Madden set forth the question as follows:

> [3, 4] Section 3692 covers matters formerly found in §11 of the Norris-LaGuardia Act. It is inapplicable to a proceeding under the Labor Management Relations Act. This inapplicability is evidenced by §10(h) (29 U.S.C. §160(h) of said Act, which excludes such proceedings as injunction and enforcement from the limitations of the Norris-LaGuardia Act. Bakery Sales Drivers Local Union No. 33 v. Wagshal, 333 U.S. 437, 442, 68 S.Ct. 630, 92 L. Ed. 792 (1948); Building and Construction Trade Coun. of Met. Dist. v. Alpert, 1 Cir., 302 F.2d 594, 596-597 (1962).

In National Labor Relations Board v. Red Arrow Freight Lines, 5 Cir., 193 F.2d 979 (1952), where a charge of contempt of a court of appeals was being considered it was held that respondents were not entitled to a jury trial.

Madden v. Grain, Elevator, Flour & Feed Mill Workers, supra, 334 F.2d at 1020.

In looking to §10(h)[*] of the Taft-Hartley Act for authority for its conclusions regarding §3692, the Seventh Circuit made the same error as did the court below confusing the equity jurisdiction of the court with its power to punish for criminal contempt. Because of this confusion the Court cited as authority for its conclusion §3692 does not apply to Taft-Hartley contempts, two cases which dealt not with the scope of §3692 or even with contempt, but with whether the Norris-La-

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*/ Section 10(h) states that: When granting appropriate temporary relief or a restraining order, or making or entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of the courts sitting in equity shall not be limited by sections 101 to 115 of this title. 29 U.S.C. 160(h).

Guardia Act governed the power of the district court to issue injunctions against secondary boycotts under §10(1) of the Taft-Hartley Act. See Bakery Sales Drivers Local Union No. 33 v. Wagshal, supra and Building and Construction Trade Council of Met. Dist. v. Alpert,[*] supra.

The final case relied on by the Madden court, NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir., 1952), related to the unique circumstance of an alleged violation of a charge of contempt of a Court of Appeals order. There the question was not one of §111 versus

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*/ In finding that the Norris-LaGuardia Act was not applicable to §10(1), the court looked to the express language of §10(1), which provided for injunctive relief "notwithstanding any other provision of law." Building and Construction Trades Council v. Alpert, supra, 302 F.2d at 597. The Madden court obviously did not pay the same respect to the clear language of §3692.

§3692, but whether the Court of Appeals was deprived of jurisdiction over the contempt because it could not provide a jury. Without setting forth the authorities they relied on, the court simply stated:

> Upon full consideration of the authorities and arguments, we find ourselves in agreement with the Board that this is not a contempt proceeding within the meaning of the statute invoked by respondents, so as to require a jury trial, and that there can be no question as to our jurisdiction to proceed with the inquiry, whether in recognizing U.T.E., respondents are in contempt of our directive.
>
> 193 F.2d at 980.

It should be clear from the above that Red Arrow Freight is totally distinguishable from the situation herein and no basis for the Madden court's conclusion that §3692 does not apply to Taft-Hartley contempts.

The other two cases cited by the court below, Brotherhood of Locomotive Firemen and Enginemen, and Schauffler,

are both civil contempts and therefore, as in Madden, their discussion of the applicability of §3692 to criminal contempts arising under Taft-Hartley is at best dicta. Furthermore, in Brotherhood of Locomotive Firemen and Enginemen, after concluding that §3692 was inapplicable to civil contempts, the court merely noted that $3692 was a recodification of §111 and said nothing further. As we have already noted above, that observation ignores the plain changes that were made in the jury provision of the recodification, generalizing the coverage of the section to all contempts in labor injunctions. Finally, both cases base their conclusions on Madden or cases relied on therein.

Thus, none of the cases above can be used as precedent for the question herein, for none are criminal contempts

arising out of labor disputes within the accepted meaning of those words but are either cases of civil contempt or actions over which the Court of Appeals rather than the District Court has original jurisdiction.

III. THE TAFT-HARTLEY ACT DEALS WITH LABOR DISPUTES.

The only question which could possibly remain is whether the charges of criminal contempt in this case arise out of a labor dispute as required by §3692. In the Union Nacional de Trabajadores case, the National Labor Relations Board argued that §3692 does not apply to contempts arising out of the Taft-Hartley Act because the statute allegedly related to unfair labor practices rather than labor disputes.

In considering the question, the First Circuit concluded that the Taft-Hartley

Act does govern labor disputes and that many unfair labor practices grow out of labor disputes. The court discussed the question as follows:

> ...many cases involving an unfair labor practice arise out of a 'labor dispute.' 4/
>
> 4/ Given the broad definition of 'labor dispute' in both 29 U.S.C. §113(C) (Norris-LaGuardia Act) and 29 U.S.C. §152(9) (NLRA) both of which definitions include, inter alia, 'any controversy...concerning the association of representation of persons in negotiating...terms or conditions of employment,' many controversies concerning unfair labor practices would by definition involve or grow out of labor disputes.
>
> We distinguish cases arising out of unfair labor practices from those arising under statutes vesting the government with authority to enforce compliance with more sharply defined federal standards which are not subject to bargaining as in Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (D.S. Miss., 1964) and In re Piccinini, 35 F.R.D. 548 (W.D.Pa. 1964) (Fair Labor Standards Act).

Finally, we need only to look to the

statement of facts in the opinion below to see that the charges of contempt in this case resulted from an order enjoining an alleged secondary boycott arising out of "a labor dispute [which] had existed between the Journal and San Francisco Typographical Union No. 21 (Local 21), Int'l. Typographical Union, AFL-CIO." Hoffman v. Longshoremen and Warehousemen, Local 10, supra, 492 F.2d at 931.

It should therefore be clear that the charges of criminal contempt here, as well as many others resulting from alleged violations of Taft-Hartley injunctions, arise out of labor disputes as required by §3692.

CONCLUSION

In current labor history criminal contempts rarely, if ever, are governed by the Norris-LaGuardia Act. Rather they result from the application of the Taft-

Hartley Amendments to the National Labor Relations Act.

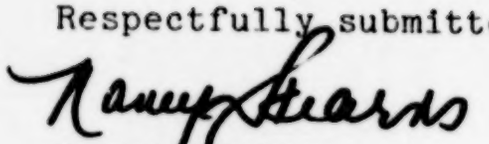
Should this Court construe 18 U.S.C. §3692, which by its terms applies to "any case involving or growing out of a labor dispute," to apply only to Norris-LaGuardia contempts, it would be negating the express changes made by Congress and at best, relegating the recodification of the jury guarantee to a meaningless exercise.

In light of the lack of express legislative history to the contrary, this Court must look to the wording of the statute to determine its scope and application. In so doing, this Court should consider that the concept of trial by jury is one of the most sacred concepts in Anglo-American law. See, e.g., Duncan v. Louisiana, 391 U.S. 145 (1968). In the past term, this Court has recognized the im-

portance of providing trial by jury even in civil cases where Congress or the founders of the United States sought to guarantee this important protection. Pernell v. Southall Realty, __U.S.__, 94 S.Ct. 1723 (1974), Curtis v. Loether, __U.S.__, 94 S. Ct. 1005 (1974). See also, United States v. J.B. Williams Co., __F.2d__, 42 L.W. 2602 (2nd Cir. 5/2/74). Here, where this fundamental safeguard is granted by statute, it should be applied broadly, and not in such a narrow fashion as to make it absolutely meaningless.

Petitioners therefore urge that this Court adopt the position of the First Circuit and rule that §3692 does, as it states, apply to all contempts "involving or growing out of labor disputes" and not merely those governed by Norris-LaGuardia.

Respectfully submitted,



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